

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

HOWARD LEE WHITE,

Plaintiff,

vs.

DELMAR SNIDER et al.,

Defendants.

3:08-cv-00252-RCJ-VPC

**ORDER**

The magistrate judge has granted Plaintiff's motion for the issuance of six blank subpoenas but has refused to order the U.S. Marshal to locate and serve witnesses or to pay related fees and costs because Plaintiff does not have leave to proceed *in forma pauperis* in this Court. (*See* Mins., May 17, 2010, ECF No. 97). Plaintiff objects to the order.

Rule 72(a) permits a district judge to modify or set aside a magistrate judge's non-dispositive ruling that is clearly erroneous or contrary to law:

When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

Fed. R. Civ. P. 72(a). Local Rule IB 3-1(a) is the equivalent local rule. "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United*

1 *States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). An order is contrary to law if it misapplies  
2 a statute, rule, or authoritative ruling.

3 The Court denies Plaintiff's objection. Although he has now attached to his objection an  
4 application to proceed *in forma pauperis* and supporting paperwork, the magistrate judge  
5 correctly ruled that unless and until such an application is approved, Plaintiff is not entitled to  
6 avoid fees or to the services of the U.S. Marshal. *See* 28 U.S.C. § 1915. The magistrate judge  
7 also correctly found that Plaintiff had not yet done so in this case.

8 **CONCLUSION**

9 IT IS HEREBY ORDERED that the Objection (ECF No. 101) is DENIED.

10 IT IS FURTHER ORDERED that the Clerk shall DETACH and FILE the application to  
11 proceed *in forma pauperis* and supporting paperwork that Plaintiff has attached to the present  
12 motion as a separate motion.

13 IT IS SO ORDERED.

14 Dated this 14<sup>th</sup> day of April, 2011.

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16 ROBERT C. JONES  
United States District Judge  
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